

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TAMMY MCCRAE-COLEY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:21-cv-666
)	
STARTER HOMES PROGRAMS INC.,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**STARTER HOMES DEFENDANTS' MOTION TO SET ASIDE OR
VACATE ENTRY OF DEFAULT AND FOR LEAVE TO FILE ANSWER**

Pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, Defendants Starter Programs Homes, Inc., d/b/a renttoownhomefinder.com and Lending Cloud Homes; Starter Home Investing, Inc., d/b/a renttoownhomefinder.com and Lending Cloud Homes; Xanadu Marketing, Inc., individually (assumed name Apex Page Builder), d/b/a cloudbasedpersonalloans.com and xanadutrucking.com; and Insurance-Reviewed.com (collectively hereinafter, "Starter Homes" or "Starter Homes Defendants") move to set aside the Clerk's entry of default.

In support of their motion, these Defendants respectfully show the Court as follows:

1. Plaintiff filed a motion for entry of default against the Starter Homes Defendants on June 9, 2022. The Clerk of Court entered default

against the Starter Homes Defendants the next day before they could act.

2. The Starter Homes Defendants had expected Plaintiff to provide them a demand based on a call held at 10:00 am June 9, 2022, but instead of Plaintiff responding with a demand, her motion was filed that afternoon.
3. These Defendants respectfully submit that they were not in default because they had appeared by implication, and this fact alone made entry of default improper.
4. Even assuming they were in default, the Starter Homes Defendants can easily show good cause under the Fourth Circuit's test for setting aside the entry of default against a non-appearing defendant.
5. For support, the Starter Homes Defendants rely on their accompanying brief, the Proposed Answer to the Second Amended Complaint (Exhibit A), the Declaration of Edward Winkler (Exhibit B) along with its exhibits, information on Plaintiff's law firm printed from the website of the Missouri Secretary of State (Exhibit C), and a printout from the website of the United States Department of Veterans Affairs showing Plaintiff's use of the phone number at issue for her legal practice (Exhibit D).

WHEREFORE, the Starter Homes Defendants respectfully ask this Court to set aside or otherwise vacate the entry of default entered by the Clerk on June 10, 2022; grant them leave to file their answer to Plaintiff's Second Amended Complaint within five days, or another period of time deemed reasonable by the Court, after the setting aside of said default; and grant them such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 24th day of June, 2022.

/s/B. Tyler Brooks
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically on June 24, 2022. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, including the counsel of record for defendants indicated below. It has also been mailed to the *pro se* plaintiff at the below physical address.

/s/B. Tyler Brooks
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